

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 07/28/2016

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Reina Cook

CASE NO: **56-2015-00465460-CU-BC-VTA**

CASE TITLE: **Aerovironment Inc vs. Torres**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion for Summary Adjudication of Issues

MOVING PARTY: Aerovironment Inc

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication of Issues, 05/04/2016

EVENT TYPE: Motion for Summary Judgment and/or Adjudication

MOVING PARTY: Gabriel Torres, Jeff McBride, Micasense Inc, Justin McAllister

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 05/16/2016

EVENT TYPE: Motion - Other (CLM) to Seal Av's Opposition to deft's motion for summary adjudication

MOVING PARTY: Aerovironment Inc

CAUSAL DOCUMENT/DATE FILED: Motion - Other to Seal Av's Opposition to deft's motion for summary adjudication, 07/05/2016

Additional events listed on last page.

APPEARANCES

JENNIFER S. BALDOCCHI, counsel, present for Plaintiff(s).

A LOUIS DORNY, counsel, present for Defendant(s).

Ryan Crain, counsel for Plaintiff Aerovironment, Inc, is present

At 09:09 a.m., court convenes in this matter with all parties present as previously indicated.

The Court grants parties' request to seal courtroom. The courtroom is ordered sealed. The Court orders the transcript to be sealed.

As to Motion to Seal the Declaration of A Louis Dorny ISO Defendant's Motion for Summary Adjudication:

The Court finds/orders:

The motion is granted .

As to Motion to Seal Aerovironment, Inc's Opposition to Defendant's Motion for Summary Adjudication:

The Court finds/orders:

The motion is granted .

As Defendants' Motion for Summary Judgment and/or Adjudication:

Counsel have received and read the court's written tentative ruling.

The Defendant will submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

After further consideration of the submitted matter, the court rules as follows:

The court's ruling is as follows:

Defendants Gabriel Torres, Justin McAllister, Jeff McBride, and Micasense, Inc.'s Motion for Summary Adjudication (Opposed)

Evidentiary Matters:

Plaintiff's Evidentiary objections to the declarations A. Louis Dorny, Dr. Gabriel Torres, Justin McAllister, and Jeff McBride:

Sustain numbers 1, 28-36, 69-80, 116, 117

Overrule numbers: 3, 4, 20-23, 39, 58-64, 100, 11, 112,

Moving defendants' undisputed material facts:

Fact 1 is disputed and establishes that the Inventions Agreements are substantially identical.

Fact 2 is disputed and not established as stated.

Fact 3 is disputed and establishes a shortened and incomplete version of what the Agreements state regarding the assignment of inventions.

Fact 4 is disputed but not established.

Fact 5 is disputed but not established.

Fact 6 is disputed but not established.

Fact 7 is disputed but not established.

Fact 8 is disputed but not established.

Fact 9 is disputed but not established.

Fact 10 – [The court defers from making a determination.]

Issue 1: Plaintiff's 1st cause of action for breach of contract fails because the patent and confidentiality agreement is an unlawful restraint of trade.

Ruling: Deny. Defendants have not met their burden on this motion under CCP 437c(p)(2). The burden did not shift to Plaintiffs to establish a triable issue of material fact.

Issue 2: Plaintiff's 1st cause of action for breach of contract fails because the patent and confidentiality agreement is unconscionable.

Ruling: Deny. Defendants met their burden on this issue under CCP 437c(p)(2) and the burden shifted to Plaintiff to establish a triable issue. Plaintiff established a triable issue as to whether the subject patent and confidentiality agreement is unconscionable.

Issue 3: The 2nd cause of action for fraud fails because Plaintiff cannot demonstrate harm

attributable to defendants' alleged misrepresentations.

Ruling: Deny. Defendants met their burden on this motion under CCP 437c(p)(2). The burden shifted to Plaintiffs to establish a triable issue. Plaintiff established a triable issue as to whether there was harm attributable to defendants' alleged misrepresentations.

Issue 4: Summary adjudication is necessary because assertion of the state's secret privilege precludes presentation of a valid defense. The court cannot make a ruling one way or the other on the state's secrets privilege until more evidence is developed. Since the court believes the privilege has not yet been adequately invoked, the issue is not before the court. A requisite declaration of a government official is required. That being said, my gut tells me that there may be a state secret at play here but I would need more information. I don't know if the potentially "secret" material is central to this case; I think there is a strong argument it is.

Plaintiff's Cal. Labor Code 2860 claim (third cause of action.)

Defendants contend that this claim fails because the concept of a multispectral camera was public knowledge. In ¶55 of the FAC, it is alleged that the breach of the Labor Code stems from "the Individual Defendants . . . [use of] the information about AV's inventions, improvements discoveries, ideas and designs, which they acquired by virtue of their AV employment . . . to create and market the MicaSense RedEdge." Defs concede what the statutory language of Section 2860 purports to protect. (See above.) However, according to defs, in practice, this section is viewed as, and analyzed synonymously with, the common law duty of loyalty. (See Cf. *Align Tech., Inc. v. Tran* (2009) 179 Cal.App.4th 949, 954, n.3 – summarizing causes of action thusly, "breach of loyalty (Lab. Code §§ 2860-2863)"). Defendants contend, therefore, just as AV's claim for breach of duty of loyalty and breach of contract claims are both susceptible to summary adjudication because the multispectral camera idea was not developed from AV's confidential information, so too this must cause of action must be disposed of.

AV contends that defs violated Section 2860 by taking RedEdge, ATLAS and the myriad, confidential documents reflecting their research, development, and design work. Defs agreed to preserve such Inventions as confidential information of the Company, and to return documents containing confidential information on termination of their employment. (Torres, Ex. 505). This is AV's property, and it is well-settled that employers can seek the return of their property from former employees. (See *Angelica Textile Servs., Inc.*, 220 Cal.App.4th at 508 – "even if the documents Park took with him when he left [his employer] contained no trade secrets, they were still tangible property and therefore the proper subject of a conversion claim"); *Conn v. Superior Court* (1987) 196 Cal.App.3d 774, 781 –requiring return of documents to employer); *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4th 1279, 1288.)

Deny. There is a triable issue of material fact as to whether the RedEdge and ATLAS products belong to AV and whether related documents were confidential in the first place (provided the underlying Agreement is enforceable.)

Notice to be given by the clerk.

As to Plaintiff's Motion for Summary Adjudication of Issues:

Matter submitted to the Court with argument.

The Court finds/orders:

Motion for Summary Adjudication of Issues continued to 08/25/2016 at 08:20 AM in department 43.

Parties waive notice.

ADDITIONAL EVENTS:

EVENT TYPE: Motion - Other (CLM) to Seal the Declaration of A Louis Dorny Iso Defendant's Motion for Summary Adjudication

MOVING PARTY: Gabriel Torres, Jeff McBride, Micasense Inc, Justin McAllister

CAUSAL DOCUMENT/DATE FILED: Motion - Other to Seal the Declaration of A Louis Dorny Iso Defendants Mtn for Summary Adjudication, 07/01/2016